IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1164 of 1987

with

CROSS OBJECTIONS NO 2 OF 2004

Date of Decision: 20.4.2005.

UNITED INDIA INSURANCE CO.LTD.

Versus

JAYABEN DAYABHAI BAGTHARIYA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whet

Appearance:

1. First Appeal No. 1164 of 1987
MR RR MARSHALL for Appellant No.
MR PM THAKKAR for Respondent No. 1
NOTICE SERVED for Respondent No. 2

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

Against the award of the MACT (Main) Rajkot in MAC Case No. 318 of 1984 dated on October 7, 1985, the appellant has preferred this appeal while the claimant

has filed Cross Objections No. 2 of 2004 for enhancement of compensation.

Whether reporters of Local Papers may be allowed to see the Judgment?

Briefly stated, the claimant sought compensation of Rs.1,50,000.00 for injuries sustained by her in the accident which took place at about 10.30 p.m. on Rajkot Gondal Road near Biliyara Railway Crossing when truck bearing Registration No. GTS 5984 driven at excessive speed rashly and negligently by the driver hit her. Claimant suffered following injuries :

(1) Very bad and ugly scar over the right leg and ankle 23x10 cms in size. The scar is adhere to the deeper structure.
(2) Multiple pin hole marks over the right leg.
(3) Irregular scar over posterio lateral aspect of the right leg in middle part 18 cms. x 2 cms.
(4) Irregular scar on the dorsum of the right feet 3.5 cms x 2.5 cms.
(5) Curved deep scar in the sole of the right foot dividing the knee and the fore font into different compartments 10 cms in size.
(6) Bony spike with tenderness over the proximal leg right side.
(7) Tenderness over the right leg and ankle.
(8) Termind knee flexion limited right side.
(9) Dorsi flexion of right ankle O degree, planter flexion 20 degrees.
(10) Subtalar movements limited on right side by 50 per cent.
(11) Stifness of the toes of the right feet.
(12) Operative scar on medial aspect of the left foot 9 cms in size.
(13) Another curved operative scar on the medical aspect of first MP Joint left foot 7 cms in size.
(14) Third deep scar of 1.5 cms in diameter on the dorsum of the left foot at the base of the fourth toes.
(15) Mild stiffness of the first MP Joint Joint left side.
(16) Coke toe deformity 2nd, 3rd, and 4th toes.
(17) Mid tarsal movement limited by 25 per cent on the left side.
(18) Shortening of the right leg 1.5 cm
(19) Wasting of the right thigh 3 cms.
(20) Wasting of right leg by 1 cm."

According to Dr. Dholakia, the claimant suffered

permanent partial disability of the right lower limb 40%, left lower limb 10%, total disability 46%. Claimant remained in the hospital for over three months, subjected to repeated operations resulting in substantial disfiguration of the body pointed out by Dr. Dholakia. During all this time, the claimant must have underwent severe pain, shock and suffering for the fractures and other injuries suffered by her meeting medical expenses, transportation, special diet, attendant needed in such a situation. Claimant alleges that she was doing tailoring work, earning Rs.300.00 p.m. She was housewife, therefore, apart from the income from tailoring work, her contribution to the family was much more than her contribution from the tailoring work much more than a person engaged to do the household work. With this back ground, compensation award of Rs.80,000.00 is not a just compensation. Therefore, compensation deserves to be enhanced. Instead of awarding compensation under different heads, lumsum compensation of Rs.1,30,000.00 is awarded with interest at the rate of 6% p.a. from the date of the application till the date of payment. Since the Claims Tribunal has awarded Rs.80,000.00, enhancement is to the extent of Rs.50,000.00. Cross Objections No.2 of 2004 is therefore allowed. Appeal is dismissed. Enhanced compensation of Rs.50,000.00 (Rs.fifty thousand only) carrying interest at the rate of 6% p.a. from the date of application till the date of payment is awarded. Compensation be paid within six weeks. Costs of this Court on parties.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

Vyas